

FRANCIS HERMANN BOHLEN

LEARNED HAND †

The law of torts has been a succession of efforts to put new wine into old bottles. When the manufacture of new writs ceased, it became necessary to find room for the demands of a constantly more complex society in old forms devised before the actual problems had been even suspected. The same was indeed true of other parts of the law, but these generally had more internal coherence. The interests at stake in torts are not mutually dependent; each is apt to represent a good merely because society chooses so to regard it. The subject lacked structure; and Bohlen's work has consisted principally in trying to impose some pattern upon the amorphous material. It was a task of great difficulty and demanded much acuteness, and an endurance of unending verbal refinements which would have prostrated a less determined man. The result inevitably violated much convention; the terminology has been challenged as pedantic; the qualifications, as cumbersome; the outcome, as confused. Such criticism of any thoroughgoing effort was to be expected; and time will disclose its eventual success. But I believe there has never been so concentrated and persistent an effort to clear away the thicket, and to bring to view the wood that lay behind. Nobody, who has not been to some extent associated with the undertaking, would credit the arduousness of the task, or have any intimation of the skill and self-control that were necessary to bring it to a conclusion. The mere planning alone was trying enough, but the labor of holding to the subject-matter and bringing to agreement, a group—themselves experts who inevitably each had his own notions—was far more exacting. He did, however, manage to accomplish all this and would have finished the whole work, if his health had stood up. It has already become recognized throughout the profession and it will continue to gain in authority with time. It would have been impossible without Bohlen, and it will stand as an enduring monument to his memory.

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